

UK Financial Conduct Authority Explains its Approach to Sexual Harassment Issues at Regulated Firms

October 26, 2018

In an interesting letter published last week, the FCA's Megan Butler (Executive Director of Supervision – Investment, Wholesale and Specialists Division) has outlined how the FCA ensures that regulated firms take sexual harassment issues seriously and expects firms to respond to such allegations.¹ Ms Butler's letter makes the following key points:

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- **Firm supervision.** Through its supervision of firms, and as part of its ongoing focus on improving the culture of the financial services industry, the FCA examines whether firms are fostering a culture where sexual harassment is tolerated. As the letter points out, this could reflect an environment where employees are afraid to speak up and challenge decisions, leading to other forms of serious misconduct occurring.
- **Individual accountability.** Whether individuals are subject to the Senior Managers and Certification Regime ("SMCR") or the Approved Persons' Regime, they must be 'fit and proper' to perform their roles. Either the FCA (in relation to Senior Managers under the SMCR and all Approved Persons) or firms (in relation to more junior staff under the SMCR) are required to consider, as part of making that assessment, whether an individual has been sanctioned for discrimination, harassment or sexual misconduct.
- Further, the letter clarifies that sexual harassment and other forms of non-financial misconduct can amount to a breach of the SMCR Conduct Rules, particularly the requirement to act with integrity. The FCA has previously banned individuals where their conduct outside work demonstrates a lack of honesty and integrity that does not make them 'fit and proper' persons.²
- **Reporting to the FCA.** FCA Principle 11 generally requires firms to disclose to the FCA anything of which it would reasonably expect notice. This may include potentially serious employee misconduct. The SMCR also requires firms to notify the FCA of any Conduct Rule breaches by Senior Managers within seven days.

¹ Letter to Rt Hon Maria Miller MP (Chair, House of Commons Women and Equalities Committee) (28 September 2018)

² See FCA Final Notice against Jonathan Paul Burrows (15 December 2014)

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- **Whistleblowing.** The letter outlines the FCA's rules regarding the whistleblowing arrangements that firms must have in place internally and states that the FCA is also willing to receive whistleblowing information on sexual harassment concerns, particularly where this suggests that a firm is systematically mishandling allegations or creating a culture of sexual harassment.
 - Notably, the letter emphasises that so-called 'gagging orders' do not affect a victim's ability to report allegations to the FCA. The FCA's rules oblige firms to include in their settlement agreements with employees a provision that such agreements do not prevent the employee from making 'protected disclosures' in the public interest under the Employment Rights Act 1996.

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